United Nations CRPD/C/13/2

Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Report of the Committee on the Rights of Persons with Disabilities on its thirteenth session (25 March–17 April 2015)

I. States parties to the Convention and the Optional Protocol thereto

1. As at 17 April 2015, the closing date of the thirteenth session, there were 153 States parties to the Convention on the Rights of Persons with Disabilities and 86 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available from the website of the Office of Legal Affairs of the Secretariat.

II. Opening of the thirteenth session of the Committee

2. The thirteenth session opened in a public meeting with welcoming remarks by the Chair of the Committee. The opening statement was delivered by the Chief of the Groups in Focus Section of the Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights (OHCHR), and is available on the Committee's website.

3. The Committee adopted the provisional agenda and tentative programme of work for the thirteenth session (CRPD/C/13/1).

III. Membership of the Committee

4. The list of members of the Committee as at 17 April 2015, indicating the duration of their terms of office, is available on the Committee's website.

IV. Election of the Bureau

5. The election of the Bureau was led by the Chief of the Groups in Focus Section. The following members were elected for a term of two years, in accordance with rules 15, 16 and 17 of the rules of procedure of the Committee:

Chair: Maria Soledad Cisternas Reyes

Vice-Chair: Diane Kingston

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Vice-Chair: Silvia Judith Quan-Chang

Vice-Chair: Theresia Degener

Rapporteur: Martin Mwesigwa Babu

V. Working methods

6. The Committee discussed its working methods and adopted the decisions contained in annex I to the present report.

VI. Activities related to general comments

7. The working group on women and girls with disabilities proposed a draft general comment on article 6 of the Convention and a timeline for further consultations with stakeholders. Both proposals were endorsed by the Committee.

8. The working group for the preparation of a draft general comment on article 24 (education) elected its Chair and Vice-Chair and adopted a timeline for the preparation of the draft.

VII. Activities related to the Optional Protocol

9. The Committee adopted Views on communication No. 9/2012, *A.F. v. Italy* (CRPD/C/13/D/9/2012), and an inadmissibility decision on communication No. 12/2013, *A.M. v. Australia* (CRPD/C/13/D/12/2013). Summaries of those decisions are available in annex II to the present report.

10. The Committee adopted the note by the Secretary-General on the 29 submissions it received between the twelfth and thirteenth sessions. As at the start date of the session, the Committee had registered 26 communications, of which 10 had been examined.

11. The Committee adopted its interim follow-up report with regard to the Views adopted in *H.M. v. Sweden* (CRPD/C/7/D/3/2011), *Nyusti and Takács v. Hungary* (CRPD/C/9/D/1/2010), *Bujdosó et al. v. Hungary* (CRPD/C/10/D/4/2011), *Gröninger v. Germany* (CRPD/C/11/D/2/2010) and *X v. Argentina* (CRPD/C/11/D/8/2012). It considered that the measures adopted concerning communication No. 3/2011 were not satisfactory and decided to discontinue the corresponding follow-up activities. The Committee considered that additional measures remain necessary to implement the Views adopted in relation to the last four communications mentioned above, with regard to which the follow-up dialogue is ongoing.

12. The Committee considered matters related to inquiry proceedings pursuant to articles 6 and 7 of the Optional Protocol to the Convention.

VIII. Other decisions

13. The Committee adopted its report on its thirteenth session (CRPD/C/13/2) and its third biennial report to the General Assembly (A/70/55), for submission also to the Economic and Social Council.

IX. Future sessions

14. The fourteenth session of the Committee is scheduled to be held from 17 August to 4 September 2015 and will be followed by the fourth meeting of the pre-sessional working group, to be held from 7 to 11 September 2015.

X. Accessibility of the Committee's meetings

15. Captioning was provided by the United Nations in all public meetings and was facilitated, in some private meetings, by disabled persons' organizations. International sign language interpretation was provided during the majority of public meetings and national sign language interpretation was provided during the dialogue with the Dominican Republic. Captioning in Russian was provided for the first time during the dialogue with Turkmenistan.

XI. Cooperation with relevant bodies

A. Cooperation with United Nations organs and specialized agencies

16. At the opening meeting of the session, representatives of the following United Nations agencies, departments and programmes made statements: OHCHR, the United Nations Children's Fund, the World Intellectual Property Organization, the World Health Organization and the Standing Committee on Victim Assistance and Socio-Economic Reintegration of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

17. The Committee met with the Special Rapporteur on the rights of persons with disabilities to discuss matters related to the coordination of the mandate of the Special Rapporteur with that of the Committee. The Committee, the Special Rapporteur and the Special Envoy of the Secretary-General on Disability and Accessibility issued a joint statement on universal ratification of the Convention on the Rights of Persons with Disabilities, the inclusion of a disability perspective in the post-2015 development agenda and the World Humanitarian Summit, to be held in 2016, and the inclusion of women with disabilities in the 20-year review of the implementation of the Beijing Declaration and Platform for Action (annex IV).

18. The Committee held a technical meeting with the team in charge of the design and implementation of the strategic heritage plan, during which the inclusion in the plan of accessibility-related considerations was discussed.

B. Cooperation with non-governmental organizations and other bodies

19. The Committee was addressed by representatives of the International Disability Alliance, the International Disability and Development Consortium, Disability Council International, the World Network of Users and Survivors of Psychiatry, Organisation Intersex International Europe, the German Institute for Human Rights, the World Coalition against the Death Penalty, the Danish Institute for Human Rights, Human Rights Watch, the World Federation of the Deaf, Autistic Minority International, the Mental Disability Advocacy Centre, European Agency for Development in Special Needs Education and the Zero Project.

XII. Consideration of reports submitted in accordance with article 35 of the Convention

20. The Committee considered the initial reports of the Cook Islands (CRPD/C/COK/1), Croatia (CRPD/C/HRV/1), the Czech Republic (CRPD/C/CZE/1), the Dominican Republic (CRPD/C/DOM/1), Germany (CRPD/C/DEU/1), Mongolia (CRPD/C/MNG/1) and Turkmenistan (CRPD/C/TKM/1). The Committee adopted concluding observations on those reports, which are available from the Committee's website. The Committee adopted a list of issues in relation to the initial report of the European Union (CRPD/C/EU/Q/1).

XIII. Conference of States parties to the Convention

21. The Committee decided that it will be represented by the Chair and one Vice-Chair at the eighth conference of States parties to the Convention, to be held in New York from 9 to 11 June 2015.

Annex I

Decisions adopted by the Committee during its thirteenth session

1. The Committee adopted concluding observations in relation to the initial reports of the Cook Islands (CRPD/C/COK/1), Croatia (CRPD/C/HRV/1), the Czech Republic (CRPD/C/CZE/1), the Dominican Republic (CRPD/C/DOM/1), Germany (CRPD/C/DEU/1), Mongolia (CRPD/C/MNG/1) and Turkmenistan (CRPD/C/TKM/1).

2. The Committee adopted Views on communication No. 9/2012, *A.F. v. Italy* (CRPD/C/13/D/9/2012) and an inadmissibility decision on communication No. 12/2013, *A.M. v. Australia* (CRPD/C/13/D/12/2013). It also adopted the note by the Secretary-General on submissions received between the twelfth and thirteenth sessions, and its interim follow-up report with regard to Views under the Optional Protocol.

3. The Committee considered matters related to its inquiry procedure pursuant to articles 6 and 7 of the Optional Protocol to the Convention.

4. On the treaty body strengthening process, the Committee: (a) appointed two members to contribute to the preparation of draft guidelines on the simplified reporting procedure; and (b) decided that English and Spanish would be its working languages, and that Arabic, Chinese, French and Russian would be additional working languages only when a member of the Committee required the respective language in his or her role as country rapporteur. The Committee instructed the secretariat to follow up on that issue with those providing conference services. The decision will be reviewed in April 2016.

5. The Committee adopted its third biennial report to the General Assembly (A/70/55), for submission also to the Economic and Social Council.

6. The Committee decided that its fourteenth session would be held from 17 August to 4 September 2015 and that it would be followed by the fourth meeting of the pre-sessional working group, to be held from 7 to 11 September 2015.

7. With regard to countries and regional integration organizations to be considered at its fourteenth session, the Committee decided to consider Brazil (Theresia Degener), Gabon (Diane Kingston), Kenya (Martin Mwesigwa Babu), Mauritius (Safak Pavey), Qatar (Mohammed Al-Tarawneh) and Ukraine (Safak Pavey), as well as the European Union (Damjan Tatic, Monthian Buntan). It also decided to adopt lists of issues in relation to Chile, Jordan, Lithuania, Portugal, Serbia, Slovakia and Thailand.

8. The Committee endorsed the draft general comment on article 6 prepared by its working group on women and girls with disabilities and entrusted the working group with engaging in consultations on the content of the draft with all stakeholders.

9. The Committee amended rule 43 of its rules of procedure.

10. The Committee adopted the report on its thirteenth session.

Annex II

Summary of decisions adopted by the Committee in relation to communications submitted under the Optional Protocol

A.M. v. Australia, communication No. 12/2013

1. The Committee adopted its decision declaring inadmissible communication No. 12/2013, *A.M. v. Australia*. The author of the communication is deaf and requires Australian sign language (Auslan) interpreting to communicate. Pursuant to the Parliamentary Electorates and Elections Act 1912 of New South Wales, the author is enrolled as an elector for the State Legislative Assembly.. In compliance with section 5 of the New South Wales Jury Act 1977, he is therefore qualified and liable to perform jury duty in that State, where jurors are selected and empanelled by the Sheriff. The author has never been selected to perform jury duties, but he considers that the Sheriff's current practice of excluding deaf persons from jury duty is discriminatory, and would affect him should he be randomly selected to perform jury duty. In 2012, the author filed a complaint on his own behalf and on behalf of other deaf persons before the Australian Human Rights Commission.

2. After an unsuccessful conciliation conference held between the author and the Director General of the New South Wales Department of Justice, the Human Rights Commission terminated the author's complaint on the basis that there was no reasonable prospect of conciliation between the parties. The author considered that, through his complaint to the Commission, he had exhausted all reasonably available remedies, and he alleged that the State party had violated his rights under articles 12, 13, 21 and 29 of the Convention on the Rights of Persons with Disabilities. He claimed that the domestic authorities' refusal to permit Auslan interpreting of courtroom proceedings and jury deliberations in order to enable him to participate in jury duty, should he be selected to do so, constituted a violation of his right to enjoy legal capacity on an equal basis with others, as guaranteed under article 12 (2) of the Convention. He further claimed that the domestic authorities' refusal to permit Auslan interpreting of courtroom proceedings and jury deliberations constituted a violation of his right to effective access to justice, in violation of article 13 of the Convention. He also considered that Auslan interpretation should be seen as a "form of communication" of the person's choice and an "official interaction" within the meaning of article 21. The author claimed that the Director General and the Sheriff's refusal to permit Auslan interpretation of courtroom proceedings and jury deliberations amounted to a violation of his rights under article 29 of the Convention.

3. The Committee considered that for a person to claim to be a victim of a violation of a right protected under the Convention, he or she must show either that an act or an omission of the State party concerned has already adversely affected his or her enjoyment of that right, or that such an effect is imminent. The Committee observed that selection to perform jury duties is made randomly through a process involving several stages, and that the author had not yet been selected. Consequently, the Committee considered that the author had not yet been affected in the enjoyment of his rights, and the issue in the present case was therefore whether the author's enjoyment of his rights under the Convention might be adversely affected imminently. The Committee noted that under the New South Wales Jury Act a jury is made up of New South Wales citizens who have been chosen randomly from the electoral roll and who have received a notice of inclusion in the jury. When a person receives a summons to attend jury duty, they are asked to contact the Office of the

Sheriff if they have a disability for which some accommodation is required. The Office then assesses whether the requested accommodation can be made in the courthouse concerned. The Committee noted that a person's eligibility to serve as a juror is a matter for consideration on a case-by-case basis, depending on the particular circumstances of the trial. The Committee therefore considered that the author's submission that he might be selected imminently from the electoral roll to perform jury duties was hypothetical and insufficient for the author to claim victim status within the meaning of article 1 (1) of the Optional Protocol.

4. Accordingly, the Committee found that the author could not claim to be a victim within the meaning of article 1 (1) of the Optional Protocol, and held the communication inadmissible.

A.F. v. Italy, communication No. 9/2012

5. The Committee examined communication No. 9/2012, which was submitted by A.F., an Italian national who claimed to be a victim of a violation by Italy of article 27 of the Convention. A.F. has suffered from Gaucher's disease since childhood and has a permanent 50 per cent physical impairment. He is under permanent treatment. In December 2005, the author was unemployed and registered at the unemployment office of the Province of Modena. His name was included in the list of unemployed persons with disabilities under Law No. 68/1999 on regulations on the right to employment for persons with disabilities. The law provides for a bonus on social security tax fees and a funding scheme to adapt premises and working conditions to the needs of workers with disabilities. According to article 3 (a) of the law, at least 7 per cent of the workforce recruited by public employers with more than 50 employees should be persons with disabilities. Article 7, paragraph 2, stipulates that public employers should reserve up to half of the positions to be filled by competitive examinations for persons with disabilities.

6. In 2006, the author worked as an intern in a technical department of the University of Modena and Reggio Emilia. In May 2006, the University published a competitive examination, under category C, to recruit a scientific technician for the engineering department. The author took the examination. The preamble of the competitive examination of the University made reference to Law No. 68/1999. According to the author, under this law, persons with disabilities should be preferred to other candidates in case of equal results. The results of the public examination were officially published by Decree No. 595 of 22 September 2006; the author ranked third, with a score of 50.5/60. As only one position was vacant, he was not recruited. On 17 April 2008, the University opened a second public competitive examination for a similar position, a category C position for a scientific technician. As that examination was reserved for former military personnel, the author could not take it.

7. The author argues that, despite always having ranked highly in all the public competitive examinations he had taken, he did not succeed in any of them as the 50 per cent quota determined by Law No. 68/1999 was never respected. In February 2007, the author submitted a complaint to the Regional Administrative Court of Bologna requesting the suspension and cancellation of the public examination. He also requested that, should the Court validate the competitive examination, an equal position should be assigned to him, as he had been declared suitable for the post but had been denied the position owing to a misinterpretation of the law. In May 2007, the Administrative Court rejected the author's complaint. It noted that the University was entitled to operate within the scope of an agreement it had signed in December 2005 with the unemployment office of the Province of Modena to fulfil the 7 per cent quota, but that the agreement did not guarantee the selection and appointment of the author by the University. In June 2008, the author

appealed the decision before the Council of State, which dismissed his appeal in December 2009.

8. The author claimed that the 2005 agreement between the University and the Province of Modena for the recruitment of persons with disabilities de facto nullifies article 27 of the Convention, the Constitution and the relevant provisions of domestic anti-discrimination laws. He considered that the decision of the Council of State, which identifies the 50 per cent quota as "a general quantitative measure of the number of persons with disabilities to be hired in public entities without consideration for the kind of position concerned", validates such practice, in violation of the principles of equality and non-discrimination, as enshrined by article 27 of the Convention.

9. The Committee observed that the decisions taken in September 2006 and April and May 2007 were adopted before the Convention and the Optional Protocol had entered into force for the State party, and therefore fell outside the scope of the competency of the Committee *ratione temporis*. However, as the Council of State examined the author's claim of discrimination on its merits in December 2009, and was the highest judicial instance competent to deal with the author's claim of discrimination, the Committee considered that it was not precluded *ratione temporis* from examining the communication, as some of the judicial and administrative procedures initiated by the author had taken place after the Convention and the Optional Protocol entered into force for the State party in June 2009 .

10. As to the exhaustion of domestic remedies, the Committee noted that the administrative jurisdictions, including the Council of State, concluded that the author did not suffer any form of discrimination, and that decisions of the Council of State could only be appealed before the Court of Cassation in cases of excess of power, excess of competence, lack of jurisdiction and refusal of jurisdiction. Considering that the author's case did not fall under any of those categories, and in view of the jurisprudence of national jurisdictions, the Committee considered that it could not reasonably conclude that the remedy under Law No. 67/2006 could effectively be available for the author. It therefore considered that the author had exhausted domestic remedies.

11. As to the merits of the case, the Committee noted the author's allegations that the judgement of the Council of State was discriminatory. It recalled that it was generally for the courts of States parties to the Convention to evaluate facts and evidence in a particular case, unless it was found that the evaluation was clearly arbitrary or amounted to a denial of justice. In that regard, the Committee considered that the author had not provided any element that would enable the Committee to conclude that the provisions of the national legislation and its application amounted to a violation of his individual rights under the Convention. The Committee also considered that the Council of State had thoroughly and objectively assessed all the elements submitted by the author and the University of Modena and Reggio Emilia before reaching the conclusion that the non-selection of the author for the position for which he had applied was not discriminatory. The Committee considered that the author did not provide any evidence that would enable it to conclude that the decision of the Council of State was manifestly arbitrary or amounted to a denial of justice. The Committee therefore concluded that it could not establish a violation of article 27 of the Convention.

Annex III

Rule 43 of the rules of procedure of the Committee, as amended

Rule 43

1. A member shall not participate in any part of the consideration of a report submitted by a State party of which he or she is a national.

2. Notwithstanding any conflict of interest, pursuant to the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), members who are citizens of a regional integration organization which is party to the Convention shall not be appointed party rapporteur, but shall participate in the consideration of the report of the regional integration organization.

3. Any question which may arise under this rule shall be decided by the Committee without the participation of the member concerned.

Annex IV

Joint statement by the Special Envoy of the Secretary-General on Disability and Accessibility, the Special Rapporteur on the rights of persons with disabilities and the Committee on the Rights of Persons with Disabilities

On 7 April 2015, three United Nations mechanisms on the rights of persons with disabilities launched a coordination initiative with the aim of seeking complementarity of mandates and increasing their impact for the advancement of the rights of persons with disabilities worldwide. The Special Envoy of the Secretary-General on Disability and Accessibility, the Special Rapporteur on the rights of persons with disabilities and the Committee on the Rights of Persons with Disabilities will, in the coming year, focus on ensuring a disability perspective in the final negotiations for and in the implementation of the post-2015 development agenda, the process leading up to the twentieth anniversary of the Beijing Declaration and Platform for Action and the World Humanitarian Summit, to be held in 2016, among others. They reiterated their call for universal ratification of the Convention on the Rights of Persons with Disabilities ahead of the tenth anniversary of the Convention, in 2016, the need for unified action for the effective advancement of the rights of persons with disabilities and full accessibility for and inclusion of persons with disabilities in the work of the United Nations.